A TRUST BETRAYED:
NAMIBIA

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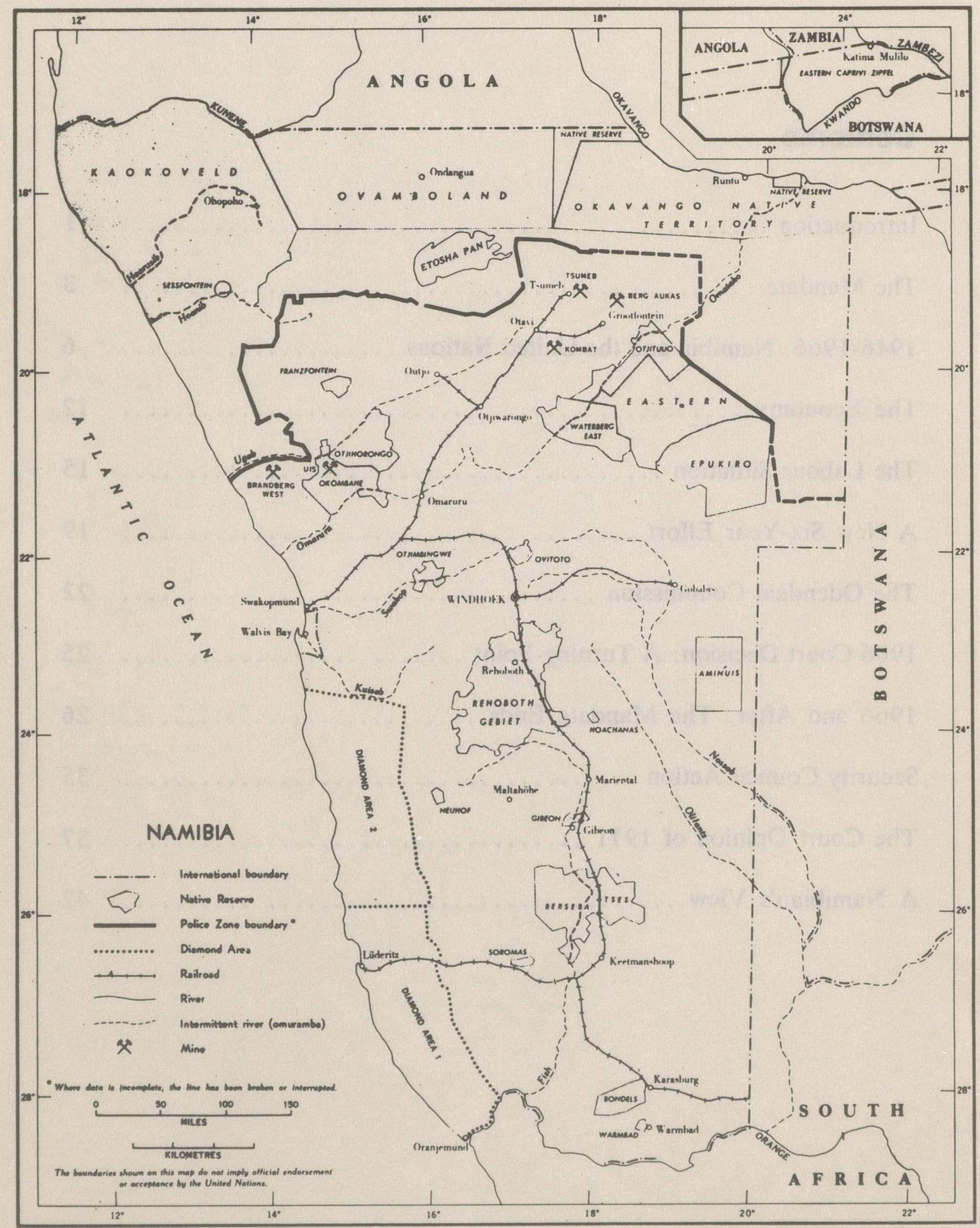

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Introduction

"We are Namibians and not South Africans. We do not now, and will not in the future recognize your right to govern us; to make laws for us in which we had no say; to treat our country as if it were your property and us as if you were our masters. We have always regarded South Africa as an intruder in our country."

In these words addressed to his South African captors, a Namibian liberation leader spoke for a people in a state of bondage. For more than half a century, the Africans of Namibia—outnumbering the whites of the country by seven to one—have been under the domination of South Africa and its policies of *apartheid* and white supremacy. Deprived of any role in government and barred from exercising their basic human rights, 500,000 Namibians await the day when they will be free and equal citizens in their own land.

The problem of South West Africa (as the Territory was known until 1968) has been a concern of the United Nations since the early days of the Organization. Despite United Nations efforts to bring Namibia into the twentieth century—under the Charter principle of "equal rights and self-determination of peoples"—the Africans of the Territory remain victims of a colonial system which stubbornly retains its hold in southern Africa.

The United Nations considers South Africa to be illegally occupying Namibia. South Africa refuses to withdraw. It persists in applying its *apartheid* system—denounced by the General Assembly as a "crime against humanity" and by the Security Council as "abhorrent to the conscience of mankind"—to a Territory in which it no longer has any right of administration. Far from loosening its grip, South Africa is seeking to break up and absorb Namibia and to stamp out all hopes for the Territory's independence. In so doing, it has defied the opinion of nearly all nations, as expressed in United Nations decisions.

According to a report of a United Nations committee:

> The history of the Administration of the Mandated Territory of South West Africa by the South African Government shows two basic policies consistently applied: (a) the ruthless application of the policy of *apartheid* in all aspects of life of the native inhabitants whereby their interests and well-being, which are paramount under the terms of the Mandate and the International Trusteeship System, have been completely subordinated to those of the white minority, thus depriving them of basic human rights and fundamental freedoms; and (b) the obvious attempt of the Mandatory Power to annex, for its own benefit, the

Mandated Territory as part of its own territory instead of developing it towards self-government or independence for the benefit of, and in accordance with the wishes of, the peoples thereto.

The whole line of policy, matter and action pursued in the Administration of the Territory has been in contradiction to the principles and purposes of the Mandate, the Charter of the United Nations and the enlightened conscience of mankind.

After two decades of futile attempts to persuade South Africa that it must recognize its legal and moral obligations towards the people of Namibia, the General Assembly was forced to terminate South Africa's Mandate and to seek—so far without success—to bring the Territory under United Nations administration. This booklet tells of the plight of the Namibians; of the constant United Nations efforts to aid them; and of their growing struggle for freedom and independence which South Africa still refuses to grant.

The Mandate

For 30 years, from 1884 until the First World War, South West Africa was under German administration. It was invaded by South African forces shortly after the beginning of the war, and by the middle of 1915 it was completely occupied.

After the war, the Allied Powers had to decide what was to be done with colonies formerly held by Germany and other defeated countries. They agreed that Members of the new League of Nations would be designated to administer those territories as "a sacred trust of civilization" and to provide for the well-being and development of the inhabitants. Article 22 of the League Covenant stated:

> To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form *a sacred trust of civilization*, and that securities for the performance of this trust should be embodied in this Covenant.

The Covenant declared that the tutelage of such colonial peoples was to be exercised by Mandatories (countries entrusted with administration of the territories) "on behalf of the League". A Permanent Mandates Commission was set up to advise the League Council, which was responsible for supervising administration of the Mandates.

In the case of South West Africa, the United Kingdom had wanted the former Germany colony to be incorporated into the neighbouring Union of South Africa, which at the time was part of the British Commonwealth. Instead, the League in 1920 conferred the Mandate over South West Africa "upon his Britannic Majesty, to be exercised on his behalf by the Union of South Africa". The Territory was placed under a "C" Mandate, which permitted South Africa to administer it as an integral part of the Union. Under the Mandate, it was stated that South Africa could apply to the Territory its own laws, but that it "shall promote to the utmost the material and moral well-being and social progress of the inhabitants of the Territory".

Until the demise of the League in 1939, South Africa submitted the required annual reports, which were examined by the Permanent Mandates Commission, and it replied to questions on various matters. It did not disguise its dislike of having to report to the League. The Commission (composed of experts rather than Government representatives) was critical of South African actions on several occasions—condemning the violent suppression of a revolt in one area, questioning the system of separate reserves where Africans were required to live, and reminding South Africa that the Mandate did not permit the annexation of South West Africa.

South Africa was not yet officially committed to the policy of *apartheid,* but discriminatory laws and regulations were put into effect in South West Africa from the beginning of the Mandate period. In the first five years, regulations controlling the movements of the "natives" were proclaimed; penalties for servants who disobeyed their masters were imposed; a Legislative Assembly was established for whites only. The League and its Mandates Commission could do little to affect South Africa's administration of the Territory.

With the outbreak of the Second World War, the League of Nations died. To whom was South Africa to be responsible for its actions in South West Africa? That became a central issue in the two decades after the United Nations was established in 1945. It was South Africa's contention that it continued to administer the Territory "in the spirit of the Mandate" but that its obligations to the League did not carry over to the United Nations. Opposite views of most other United Nations Members, and of the International Court of Justice, did not alter South Africa's position. Refusing to recognize United Nations authority regarding the Territory, South Africa kept South West Africa out of the United Nations Trusteeship System. All other Mandate Territories* either became independent or were placed under Trusteeship.

The Charter

For South Africa, the Trusteeship system of the United Nations involved objectives directly opposed to its own. Those basic objectives were set forth in Article 76 of the Charter:

> a. to further international peace and security;
>
> b. to promote the political, economic, social and educational advancement of the inhabitants of the Trust Territories, and their progressive development towards *self-government or independence* as may be appropriate to the particular circumstances of each Territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each Trusteeship agreement;
>
> c. to encourage respect for human rights and for fundamental freedoms for all *without distinction* as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
>
> d. to ensure *equal treatment* in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives . . .

South Africa's policies in the Mandated Territory also contradicted its commitment under another part of the Charter which it signed at San Francisco—Articles 73 and 74, comprising the Declaration Regarding Non-Self-Governing Territories:

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*Today only two Territories, New Guinea and the Pacific Islands, remain under Trusteeship. Territories which attained independence or self-government following Trusteeship Council supervision included the British and French Cameroons, British and French Togoland, Tanganyika, Ruanda-Urundi, Somaliland, Western Samoa and Nauru.

Members of the United Nations which have or assume responsibilities for the Administration of Territories whose peoples have not yet attained a full measure of self-government recognize the principle that *the interests of the inhabitants of these Territories are paramount*, and accept as *a sacred trust* the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these Territories, and to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each Territory and its peoples and their varying stages of advancement . . .

In the years after the signing of the Charter, the principles of human rights and self-determination were elaborated in a series of Declarations and Conventions, beginning with the Universal Declaration of Human Rights (1948) and continuing through the landmark Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and later human rights covenants. All those instruments were ignored by South Africa, which had its own notion of what the "sacred trust" meant. The South African rationale, as expressed in a recent communication to the United Nations, was as follows:

South Africa's View

. . . The need for differentiation between the various population groups arose naturally from the circumstances and conditions encountered in South West Africa—i.e., mainly from the general economic requirements of the Territory, coupled with the enormous differences between the various population groups and their diverse needs and desires.

The States represented at the Paris Peace Conference in 1919 fully realized that such differentiation would be desirable and necessary in the Mandated Territory . . . The Mandate contained specific authorization for it in Article 2 by stating that the Mandatory "may apply . . . to the Territory" the laws of South Africa, many of which were known to be based on the differential treatment of groups . . .

South Africa, which had a long experience of dissimilarities, not only between groups of different colour but also between groups of the same colour, and had as a result pursued a policy of differential treatment in the then Union of South Africa, applied a similar policy to South West Africa . . . Such a policy ensured the greatest good for the greatest number in all the groups, and was therefore the best way—indeed the only way—of adequately fulfilling her sacred trust.

The rest of the world has repeatedly rejected this defence of white supremacy and colonial domination in southern Africa, and in Namibia in particular. The people of Namibia have not forgotten the world's commitment 50 years ago to their well-being and development. As one of their leaders declared: "We feel that the world as a whole has a special responsibility towards us. This is because the land of our fathers was handed over to South Africa by a world body. It is a divided world, but it is a matter of hope for us that it at least agrees about one thing—that we are entitled to freedom and justice."

1946-1966: Namibia and the United Nations

For two decades, the United Nations patiently and persistently sought to persuade South Africa to bring South West Africa into the Trusteeship System, and to fulfil its Mandate obligations towards the people of the Territory. Resolutions were adopted by overwhelming majorities; special committees were formed; negotiations were carried out; the International Court of Justice devoted more time to the problem than to any other. South Africa was to move even further away from its commitment to a "sacred trust", seeking to dismember and annex the land and increasingly repressing its African majority.

Year. by year, until 1966, the United Nations efforts to reason with South Africa went on, with mounting frustration among most of the international community as well as among the Namibians themselves—who carried on their grim daily existence while futile efforts to help them were made in the distant chambers of the United Nations:

1946—At the first session of the General Assembly, South Africa proposed the incorporation of the Territory into the Union, and asked the Assembly to approve this step. The majority of the people, South Africa contended, favoured incorporation. The Europeans had expressed this wish through their Legislative Assembly, and two thirds of the Africans were alleged to have supported the proposal in their own "referendum". (Details on the conduct of the "referendum" by the South African-appointed Native Commissioners were not given, and the Government refused to allow outside observers to enter the Territory.)

The Assembly declared that it was unable to accede to South West Africa's incorporation into the Union. The African inhabitants had not yet secured political autonomy or reached a stage of political development enabling them to express a considered opinion on such an important question, it said. Instead, the Assembly recommended that the Territory be placed under the international Trusteeship System. In this first resolution on South West Africa, the Assembly also noted that South Africa, "by presenting this matter to the United Nations, recognizes the interest and concern of the Organization in the matter of the future status of Territories now held under Mandate".

Namibia lies along the South Atlantic Ocèan and borders on South Africa, the Portuguese-administered Territory of Angola, Zambia, and Botswana. Its area of 318,261 square miles (824,269 square kilometres) can be divided into three regions: the Namib, the central plateau and the Kalahari. The Namib, an arid and desolate region, is a coastal belt from 40 to 80 miles wide. The central plateau covers slightly more than half of the Territory's land area. The Kalahari, composed of level monotonous plains covered with sand dunes and with virtually no surface water, is in the northern and eastern parts of Namibia.

The population, according to South Africa's recent estimates, totalled about 610,000: 96,000 whites and 514,000 non-whites. Most white settlers are of German and South African origin: non-whites are classified in various groups, in accordance with South Africa's policy of racial and tribal segregation. There are Africans, Coloureds and Basters. The Africans form more than 80 per cent of Namibia's population. African groups include the Ovambo (more than half of the total), the Damara, the Herero, the

Nama, the Okavongo, the East Caprivians, the Bushmen and the Kaokovelders. The Coloureds are persons of mixed descent (about 15,000) and the Basters (13,700) are descendants of a Coloured group from South Africa which settled in the Rehoboth area of Namibia a century ago.*

1947—The Union Government informed the United Nations that it had decided not to proceed with the incorporation plan—but that it was under no obligation to place the Territory under the Trusteeship System. It would continue to administer South West Africa "in the spirit of the Mandate", South Africa said, and would submit reports on its administration for the information of the United Nations.

The Assembly took note of South Africa's decision, but firmly maintained its recommendation that the Territory be placed under the Trusteeship System. It authorized the Trusteeship Council to examine the report submitted by South Africa on its administration of South West Africa for the year 1946, and to submit its observations.

The Reserves

Everyone in Namibia is told where he may or may not live, and where he must not go without special permission. In this system of frontiers within frontiers, Africans are restricted to the tribally separated reserves or to segregated locations. The larger part of the land, including the most productive farm land and mineral resources, is for settlement only by whites.

The country is divided by an administrative boundary known as the "Red Line", the colour usually used on maps to designate the boundary of the Police Zone. The Police Zone, lying south of the Red Line, covers two thirds of the country. This is the European settler area. Within the Zone are small, scattered reserves for Africans. Even within the Zone, whites are far outnumbered by the African workers whose temporary residence is necessary for operation of the white farms, mines and industries. These Africans, with few exceptions, are required to live in segregated villages or compounds which must be separated from the white settlements by a buffer strip of 500 yards. Individual Africans do not hold title to land in the Territory.

The third of the country north of the Red Line, outside of the Police Zone, contains the northern African reserves. More than half of Namibia's population lives in those reserves. (Recently South Africa has been taking steps to break up the Territory by transforming the reserves into so-called "self-governing" nations; one of these, Ovamboland, has been established.)

As early as 1922, the Administrator of South West Africa was authorized "whenever he deems it desirable" to set aside areas as "native reserves", and the inhabitants "shall be subject to such restrictions and to such regulations as he may prescribe". Later the State President of South Africa, named "Supreme Chief" of all Africans in the Territory, was given

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*To describe the situation in Namibia, the use of such terms as white, non-white, African, Coloured and Baster is unavoidable. It does not imply endorsement by the Secretariat of the use of such classifications as a basic element in the administration of the Territory. The term African is generally used in this booklet instead of "Native" or "Bantu" employed by South Africa.

the authority to divide tribes, amalgamate tribes or constitute a new tribe "as necessity or the good government of the natives may in his opinion require", or to remove any tribe or any native "from any place to any other place".

1948—The Assembly discussed the Trusteeship Council's report criticizing South Africa's administration of South West Africa, and recommended that South Africa continue to transmit information on the Territory.

Africans of Namibia are barred from political activity and have no part in the making of laws which govern their lives completely—laws which often carry severe penalties for offenders. As the Trusteeship Council reported to the Assembly in 1948: "The Council, being convinced of the desirability of the increased participation by indigenous populations in the direction of their own affairs, notes that the indigenous inhabitants of the Territory have no franchise, no eligibility to office and no representation in the governing bodies or in the administration of the Territory." The Legislative Assembly was for whites only; Africans were prohibited not only from seeking election to the Assembly but from voting. The same prohibition applied when the whites of South West Africa later were given representation in South Africa's parliament.

Attempts at political organization are forcibly suppressed, and many leaders of African organizations have been forced into exile or subjected to constant harassment, including long-term imprisonment. Amendments to the Suppression of Communism Act authorize the South African Minister of Justice to prevent "any particular gathering", and local authorities may prohibit, control or regulate "gatherings or assemblies of natives". As for freedom of the press, any printed or written matter, pictures or posters considered "unsuitable in regard to the native mind" may be confiscated and destroyed.

One conclusion of the Trusteeship Council was that the whole question of land distribution should be re-examined by the South African Government. Nine tenths of the population, the Council observed, occupied only 43 per cent of the land. As to South Africa's "explanation" that traditional land rights of Africans had ceased to exist during the German régime except in certain areas, the Council said that did not elucidate the question of whether those rights would be restored."The Council is of the opinion that division of the indigenous inhabitants and their allocation to fixed areas is not conducive to their general advancement and that the system of confining indigenous inhabitants to 'native reserves' is to be deplored in principle . . . The Council is opposed, as a matter of principle, to racial segregation."

There were nine times as many non-Europeans as Europeans in the Territory, but only one tenth of the Territory's budget was devoted to African administration and welfare, the Council stated. Lack of medical services and schools for Africans . . . discriminatory wage rates . . . restrictions on keeping of livestock . . . poor housing conditions . . . the pass system . . . hiring out of convict labour to private persons . . . numerous convictions for breaches of the Master and Servants law (2,100 convictions in

a single year): all those aspects of the Africans' existence drew critical comments of the Trusteeship Council in 1948. Little has changed for the better since then.

1949—South Africa informed the United Nations that it had decided to stop sending reports on South West Africa, on the grounds that the information was used by the Organization in an unwarranted manner to criticize its administration. The Nationalist party had swept into power in South Africa, officially proclaiming apartheid *as the the basis of South African society. It viewed the United Nations as a racial hodgepodge; South Africa's representative to the United Nations had informed his countrymen that the Organization "consists of predominantly Coloured and Asiatic countries, and of countries whose inhabitants are of mixed blood". The whites of South West Africa were given seats in South Africa's parliament, and a new constitution for the Territory deleted references to the Mandate.*

Disturbed by these developments, the Assembly decided to seek an advisory opinion from the International Court of Justice. It put the following questions to the Court:

What is the international status of the Territory? Does South Africa continue to have obligations under the Mandate? Is the Trusteeship System applicable to South West Africa? Does South Africa have the competence to change the Territory's international status?

While the International Court of Justice was grappling with the legal aspects, the human tragedy elaborated over the years by many Namibians who appeared before United Nations bodies—the Special Committee on South West Africa, the Special Committee of 24 on decolonization, the Assembly's Fourth Committee (which deals with colonial matters), and special human rights panels. Over South Africa's protests, the General Assembly decided that such petitioners must be heard—and thus obtained volumes of evidence on conditions in Namibia, as well as appeals for action to end the injustices of South African rule.

First to speak at the United Nations in behalf of the Namibian people was a South African clergyman, Reverend Michael Scott. After the Fourth Committee voted to grant him a hearing in November 1949, Reverend Scott read many statements from tribes and individuals to illustrate his contention that discriminatory laws and practices had reduced the Africans of the Territory to a condition of servitude. He urged that the lands should be returned to the people, that the Territory should be brought under the Trusteeship System, and that the United Nations should oppose South Africa's attempts at annexation.

The Court's Opinion

1950—The International Court of Justice handed down its advisory opinion replying to the Assembly's questions. The opinion laid down the legal framework for later United Nations action. The major findings of the Court were that:

—South Africa continued to have the international obligations contained in the League Covenant and the Mandate;

—The functions of supervision over the administration of the Territory by South Africa should be exercised by the United Nations, to which annual reports and petitions from the inhabitants were to be submitted;

—South Africa continued to have the obligation to promote to the utmost the

material and moral well-being and social progress of the inhabitants as a sacred trust of civilization;

—The Charter did not impose on South Africa the legal obligation to place South West Africa under the Trusteeship System, although it provided the means by which the Territory might be brought under the system;

—South Africa acting alone was not competent to modify the international status of the Territory; such action required the consent of the United Nations.

The Assembly accepted this opinion and urged South Africa to give effect to it. Reiterating its recommendation on Trusteeship for South West Africa, the Assembly established a five-member Ad Hoc *Committee to confer with South Africa on measures for implementing the Court's opinion. The Committee was authorized to examine reports and petitions concerning South West Africa.*

South Africa, however, did not regard the Court's opinion as binding and it continued to deny the United Nations authority. Thus the conditions described by Reverend Michael Scott were much the same two decades later when Katuutire Kaura, 28, testified before the *Ad Hoc* Working Group of Experts of the United Nations Commission on Human Rights:

"I was just a toddler" when Reverend Scott gave his first testimony, the Namibian witness declared. "And now, 20 years later, it is my turn.

"It is my turn to take you to the outskirts of the Kalahari Desert, where young men are relegated to early graves because they happen to have caught a common cold and there is no medical clinic around . . . It is my turn to take you to those beloved reservations of ours where old men and old women never enjoy the comfort of old age; where little children, boys and girls alike, parade their human skeletons along the sandy avenues of our homeland.

"These are the reservations in which our people have been shuttered away by the South African Government, shuttered away into little niches, obscured from the human eye, from the human conscience and from human history . . . These are the reservations where you are lucky to be able to get a bucket of water within a distance of one mile or two miles . . . and these are the areas where we are expected to carry on successful agriculture.

"It is my turn to take you to the broken hills of Brand Berg, along the Skeleton Coast, along the Namib Desert, to unveil to you a panorama of sunken eyes, swollen knees, little boys and girls who persistently trudge through the mountains and valleys in search of something . . . It is my turn to take you to the dry, dusty trails and plains of Namaland, where children sit the whole day not knowing what to do, peering at the horizon . . .

"For how long shall the world community remain indifferent to our suffering?"

1951—Negotiations were held with South African representatives, but the Ad Hoc *Committee was unable to report any agreement. South Africa proposed that it would reassume some of its international obligations by negotiating a new international instrument with France, the United Kingdom and the United States—the three remaining members of the Principal Allied and Associated Powers of the First World War which awarded the Mandate. But South Africa would be directly responsible to the three Powers rather than to the United Nations. The proposal was unacceptable to the Committee, since it did not implement the Court opinion.*

A counter-proposal was made by the Committee: a special commission on South West Africa would be established to undertake the functions and responsibilities of the former Permanent Mandates Commission, especially the examination of annual reports and petitions concerning the Territory. But South Africa rejected this proposal; it would not compromise on the issue of accountability to the United Nations.

In general, the residence and movements of Africans in Namibia are controlled by a complex pass system. Some of those rules were summarized in a recent United Nations report:

Whites may enter the Police Zone from South Africa without permit or identification; non-whites require official permission to enter from the northern reserves or from outside the country. (Such permits normally are issued only to males recruited to work in the Police Zone.)

Within the Police Zone, whites require permits only if they wish to enter African reserves or locations in urban areas; an African requires a permit or pass

—to go beyond the confines of the location, reserve, farm or place where he resides or is employed;

—to travel within the Police Zone;

—to buy a railway ticket;

—to remain in a reserve other than his own for more than 48 hours;

—to remain for more than 72 hours in an urban area other than one in which he was born or permanently resides.

Pass System

Within the "proclaimed" areas, which include all principal urban areas of Namibia, Africans must show one of the following: (a) a permit showing the existence of a contract of employment; (b) a permit to seek work (usually valid for seven days); (c) a visitor's permit, for which a fee must be paid and which is valid for 14 days or less; (d) a licence to work as a casual labourer or as an independent contractor, for which an African must pay a fee and carry a badge. Receipts, permits, licences and badges must be produced on demand.

Even when equipped with the necessary passes or permits, Africans in the urban areas may be adjudged "idle or disorderly persons" if they are found to be habitually unemployed, habitually absent from work or leading a "dissolute" life. Under Proclamation No. 56 of 1951, any police officer "may without warrant arrest and bring that native or cause him to be brought before a magistrate or native commissioner, who shall require the native to give a good and satisfactory account of himself". If he cannot do so, the "idle or disorderly person" may be sent out of the urban proclaimed area. If he enters such an area despite an order to the contrary, he is subject to a fine or imprisonment.

1952—The Assembly solemnly appealed to South Africa to reconsider its position, and requested the Ad Hoc *Committee to continue discussions with the Union Government. After the renewed negotiations, the Committee said it had been agreed that a new instrument to replace the Mandate should be concluded;*

that the new instrument should revive the "sacred trust" contained in the Mandate; and that under certain conditions South Africa would make available information on its administration.

The unresolved issue continued to be the question of United Nations supervision over the Union's administration of South West Africa.

Since the Curfew Proclamation of 1922, authorities in urban areas of Namibia have been empowered to impose a curfew on Africans. In many areas no African may be in a public place between 9 p.m. and 5 a.m. without written permission. No African may enter an urban African township unless he is registered as a resident or has obtained a permit. Police raids on the townships are common, and there are many arrests and prosecutions: Africans lacking the necessary permission are fined up to 5 rand* or jailed. There are frequent prosecutions of Africans from the northern reserves who break employment contracts and leave their authorized place of work to go to some other part of the Police Zone. The concept that "Native" locations are not to be regarded as permanent places of abode was defined by South African Prime Minister D. F. Verwoerd: "The Bantu residential area near the city is only a place where the European provides a temporary home in his part of the country for those who require it because they are employed by him and earn their living there."

All male Africans over the age of 18 who reside on a white-owned farm must be employed by the farmer. The farmer cannot, without permission of a magistrate, employ more than 10 Africans on the farm where he resides, or more than five on any other farm. If Africans were living on the land before its allocation to the farmer, they can be required to leave or to enter the farmer's service.

An African found trespassing or loitering in a "white" area may be assigned as a labourer in public works or to a private employer. If convicted a second time he may be fined 100 rand or jailed for a year.

Africans arrested for such offences have little chance to defend themselves adequately in court. Rarely can the African afford to obtain his own lawyer; few lawyers in Namibia are willing to take on such cases unless assigned by the court.

1953—The Assembly expressed deep regret that the Union continued to maintain it had no international commitments regarding South West Africa, and reiterated for the seventh time that the Territory should be placed under Trusteeship. Until such time as an agreement was reached, the Assembly set up a new Committee on South West Africa to pursue negotiations with South Africa. The Committee was authorized, as far as possible in accordance with the former Mandates System, to examine available information on the Territory and petitions which might be submitted by inhabitants. It was asked to report to the Assembly on conditions in the Territory.

The Economy

The economy of Namibia has been described as a dual economy, consisting of a predominantly modern (European) exchange sector and a traditional

*1 rand = $1.40.

subsistence (African) sector. The exchange sector is represented by large mining companies controlled by foreign interests, a rapidly expanding fishing industry, a commercial community in the larger cities, and many large individually owned farms. That sector of the economy, which has grown rapidly in the past decade, is guided entirely by the whites. Namibia's Africans provide the unskilled labour for those enterprises, but do not share in the profits. The traditional subsistence economy is practised exclusively in the reserves (later designated as "homelands"), which make up less than half of Namibia. The better farm land, the mineral deposits, the seaports and transport facilities, and the urban areas are in the larger area of the country reserved for whites.

Water is scarce. The coastal desert region receives practically no rainfall; rains are very light in most of the Territory. Long periods of drought are common, and agricultural and industrial development has been hampered by the limited water resources. Soil fertility is limited. But the land supports cattle and sheep farming—and the dry climate suits the karakul sheep, whose tightly curled, glossy fur is sent abroad to be made into coats for the luxury trade. Namibia is the world's largest supplier of karakul. It is the second largest supplier (after South Africa) of another luxury product: gem diamonds which lie beneath the barren soil. In addition to diamonds, Namibia has a great variety of mineral deposits including copper, lead, zinc, tin, vanadium and petroleum. A thriving pilchard (sardine) and lobster industry has developed along the otherwise inhospitable coast, where teeming marine life is increasingly exploited.

Diamonds . . . karakul pelts . . . lobsters . . . Yet none of the resources of their country benefit the Africans. The profits are in millions of dollars, but the Africans may only labour in the mines and fields for a few rand a year.

1954-1955—The Assembly and the new Committee continued to invite South Africa to negotiate on the future of the Territory, South Africa declined, stating that it would not consider proposals which did not suit its basic requirements. Since the United Nations had rejected its proposal of an arrangement with France, the United Kingdom and the United States, that offer now had lapsed, the Union declared.

The Committee on South West Africa, in reports endorsed by the Assembly, said the administration of the Territory by South Africa—particularly in regard to apartheid *legislation—was not in conformity with the Mandate.*

In an advisory opinion requested by the Assembly, the International Court of Justice stated over South African objections that the Assembly was correct in treating decisions concerning South West Africa as "important questions" requiring a two-thirds majority vote. (The Council of the League of Nations, in contrast, required unanimous votes for its decisions.)

Namibia has a high proportion of foreign trade to its national income. In general, base minerals are sent to Europe or to the United States. Diamonds are produced for export through a subsidiary of De Beers Consolidated Mines of South Africa Ltd. Karakul pelts are marketed at auctions in London. Cattle and dairy products are sent to South Africa; there is a growing export of canned and frozen meats and fish to other countries.

Much of the profit from diamonds and minerals goes out of the Territory which causes a startling discrepancy between Namibia's gross domestic product and its national income. In 1965, one of the last years for which separate statistics are available, the national income was probably 40 million rand less than the gross domestic product which exceeded 200 million rand. The discrepancy is explained by the dominant role of foreign companies exploiting the Territory's resources.

In 1969 Namibia was economically incorporated into South Africa, with control over all major functions and economic activities transferred from Namibia to South African ministries in Pretoria. Their first act was to prohibit release of official information on production of specific minerals, prospecting and concessions in the Territory. That made it impossible to ascertain, for example, whether the gap between Gross Domestic Product (GDP) and Gross National Product (GNP) had increased since those last published in 1962. In that year the GNP at R104m was about 30% less than GDP.

Three principal mining operations—Consolidated Diamond Mines (a subsidiary of De Beers Consolidated Mines, Ltd.), the Tsumeb Corporation (owned by American Metal Climax, Inc. and the Newmont Mines Corporation) and the South West African Company—generated in 1971 gross profits of over $US 91 million, and net profits after taxes amounting to $US 59.4 million. Of that amount about $US 9.8 million were distributed to residents in the United States; $US 1.3 million to residents in the United Kingdom; $US 46.3 million to residents of South Africa. In addition, by owning shares in holding companies, residents of the United States and the United Kingdom collected a substantial part of the amounts nominally earned by South African residents.

1956—South Africa remained unwilling to negotiate with the Committee on South West Africa, and failed to submit reports on its administration.

The Assembly endorsed the Committee's recommendations calling on South Africa to transfer responsibility progressively to governmental bodies proper to the Territory, to repeal apartheid *laws and to take other steps to promote the people's welfare.*

The Assembly asked the Committee to study what legal action was open to United Nations Members, or to former Members of the League, to ensure that South Africa fulfilled its obligations.

The International Court of Justice, meanwhile, added another advisory opinion to the others underlining United Nations authority in regard to South West Africa. It stated that the Committee on South West Africa's oral hearings of petitioners were admissible, as a necessary means to enable the United Nations to perform its supervisory duties effectively. Scores of witnesses appeared before United Nations bodies in the following years to give their views on conditions in the Territory; some did so at considerable personal risk.

Karakul sheep were introduced in South West Africa by the German administration in 1907, and the karakul industry has become one of the most important in the Territory. The sheep flourish in the hot, dry scrubland and survive the frequent droughts. (The quality of the pelt is said to be better in times of drought.) They are bred mainly on the white-owned farms in the area south of Windhoek, the capital, and are not found in

the northern non-European area, much of which is said to be unsuitable for the sheep because of endoparasite infestation. (In a recent outbreak of foot-and-mouth disease in the Police Zone, the Government spent some 5 million rand to combat the disease; expenditures have been negligible in the cattle areas of the northern reserves, where stock diseases are prevalent.)

Nearly half the world's supply of karakul comes from Namibia. That export trade is about 20 million rand yearly. Recent statistics indicate that the garment industry of the Federal Republic of Germany consumes a major share of the karakul production of Namibia. Other leading purchasers are Italy, France, the Scandinavian countries and the United States.

The African's role in lucrative industry is that of the shepherd. "The men looking after sheep start at about 6 a.m. and finish at 7:30 p.m.," one petitioner told the United Nations. "Some farmers prefer to give the meat from karakul lambs to their pigs and fowls rather than to their labourers if there is not enough. Sometimes the sheep and cattle have better shelter than the labourers."

Commercial farming is largely confined to the European farms. Africans in the northern reserves have not been permitted to sell agricultural products outside their areas. Livestock sales are authorized in some other reserves, under Government supervision and control and within specified limits; but African livestock sales account for less than 1 per cent of the Territory-wide total.

1957—The Assembly established a Good Offices Committee (Brazil, the United Kingdom and the United States) in still another effort to negotiate an agreement with South Africa.

After examining a report of the Committee on South West Africa, the Assembly drew the attention of Members to the legal action provided for in Article 7 of the Mandate read together with Article 37 of the Statute of the International Court.

(Under Article 7 of the Mandate, it was agreed that "if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice", the predecessor of the International Court. Article 37 of the Court Statute provides that matters which formerly would have been referred to the Permanent Court were henceforth to be referred to the International Court.)

The Labour Situation

Africans provide a cheap labour pool for the white-owned mines, farms, and industries. They are brought in from the reserves to do the work under a system which guarantees they will remain transients isolated from their family in the white areas where they are needed, confined to their place of work or to their segregated compounds, barred from continuous employment in the same job, and sent back to the reserve after a fixed period to be replaced by others.

Workers from the reserves were recruited under contract by the South African Government-sponsored South West African Native Labour Association (SWANLA), among whose directors were representatives of the large mining and industrial concerns.

The SWANLA was the sole recruiting agency; it arranged for the applicant to be medically checked, x-rayed and graded for the type of employment considered suitable. Once an employer was found, a "mark of engagement" bracelet was attached to the worker's wrist and he was sent to Grootfontein to await despatch to the employer's nearest railway station. Under the contract system the labourers were bound for 12 to 30 months to work for a single employer at wage rates well below those paid to Black South Africans. At the end of the period they must return home unless invited to remain by their employer. At no time were they allowed to change their job or to negotiate for improvement in their conditions.

One objection to the contract system by the contract labourers was that it placed a great strain on the family life of the workers who were not allowed to take their families to their place of employment. They were not generally free to choose their employers or their work. For these and other reasons, some churchmen and the International Commission of Jurists have referred to the contract system as "akin to slavery".

South Africa Accused

1959—Further efforts by the Good Offices Committee to find a basis for agreement with South Africa were unsuccessful.

The wave of independence in the rest of Africa was gaining momentum, and South Africa's refusal to heed Assembly recommendations—not only on South West Africa, but on the equally long-disputed problems of South Africa's apartheid *policy within its own borders—brought sharper criticism of Pretoria. The Assembly, declaring its opposition to racial discrimination anywhere in the world, expressed concern over the Union's refusal to reconsider the* apartheid *policy. The Committee on South West Africa called for a change in the Territory's administration without delay, and accused South Africa of violating the Mandate and the United Nations Charter on the following counts:*

—Application of apartheid *and establishing the rights and duties of various sections of the population on the basis of colour, race and tribal origin;*

—Failure to promote and protect the rights and interests of the indigenous population and the Territory as a whole;

—Denial to the indigenous population of all basic human rights and fundamental freedoms;

—Continued failure to recognize and submit to the supervisory authority of the United Nations;

—General exercise of powers of administration and legislation in a manner inconsistent with the Territory's international status.

Once again, the Assembly drew Members' attention to the possibilities of legal action through the International Court of Justice. Two African countries which had been members of the League of Nations were giving special attention to this approach, and soon they would initiate the historic case of Ethiopia and Liberia v. *South Africa.*

Although African trade unions are not illegal, they are not recognized in labour laws and are actively discouraged. Namibia's trade union legis-

lation for settlement of labour disputes, is designed for whites only. The law specifies that the term "employee" used in the statute does not apply to any "native" (defined as "a member of any aboriginal race or tribe of Africa"). Thus, African trade unions may not be registered under the law.

Strikes by Africans are absolutely forbidden. Strikers may be jailed up to 50 days or fined several months' wages. On occasion, Africans subjected to unusually harsh conditions have refused to work. Sometimes such stoppages have led employers to modify conditions, but often the strikers suffer criminal penalties and, in cases of this kind, "justice" can be swift in Namibia: in one recent case, Africans refusing to work were tried, convicted and fined on the following day. Some, after paying their fines, still refused to work; they were again tried the following day and sentenced to prison terms.

A witness before an investigative panel of the United Nations Commission on Human Rights gave an example of how the South African authorities handled attempts to organize African workers:

"In South West Africa, where our union (the South African Food and Canning Workers Union) had a branch in Ludentzborg, we negotiated an agreement for the workers—the conditions and the wages were terribly bad there—and as soon as we had made an agreement for the workers with the employers, then the Government police and detectives came to the union meeting and closed it. I was present there and they ordered me out of the place and terrorized the workers, our committee members and shop stewards, and forced us to break up the branch in South West Africa in this way."

In protest against those unbearable labour conditions, on 13 December 1971 an unprecedented general strike began at Windhoek and spread rapidly throughout Namibia.

About 15,000 Africans, nearly half of the total labour force in the white part of the Territory, went on strike in 20 centres. They brought the entire mining industry to a halt and crippled services in the capital, Windhoek.

Demands of the *ad hoc* strike committee included the following:

(1) Freedom for the individual to sell his labour to the highest bidder in an employment;

(2) Freedom to change employment at any time;

(3) Freedom for workers to take their families with them to their place of work;

(4) Payment according to the prevailing rate for the work done and not according to colour, and sufficient wages to allow workers to buy their own food and to pay their own transportation costs.

Concerned by the extent of the strike, the South African authorities on 30 January 1972 announced that a new labour system had been worked out, whereby labour relations between the South African Government and the Ovambo and Kavango "governments" would henceforth be handled on the basis of official agreement between the parties. The new system

makes no provision for collective bargaining in respect of wages or working conditions. By bringing their stooges and by abolishing SWANLA, nothing is changed: the contract system is another term for the migratory labour system, and that system remained intact.

The new agreement changed the situation only in one respect: it makes it easier, in theory, for workers to change jobs; nothing was done about demands for higher wages, abolition of the pass system, and freedom of families to accompany workers to their places of employment.

The terms of the agreement remain completely unsatisfactory by modern labour standards.

"Katutura"

For the African workers of Windhoek, intimidation and the violent repression of opposition to *apartheid* took a new turn in 1959. Some 15,000 Africans were living in the segregated quarter of the capital when the South African authorities decided to move them all out of town to a new location named "Katutura", a Herero word meaning "we have no place of our own". The Africans did not want to move. Not only did they object to being regarded as inanimate assets, to be relocated whenever it suited the authorities, but the new location nearly four miles from town meant added hardship for the workers in the form of higher rentals at Katutura and bus fares which would consume a third of the average worker's pay.

The Committee on South West Africa received telegrams protesting the relocation plan from Chief Hosea Kutako, Chief Samuel Witbooi, and Mr. Sam Nujoma, president of the Ovamboland People's Organization (later the South West Africa People's Organization). Residents of the old location began a boycott of municipal undertakings there—the bus service, beer halls, cinemas and dance hall. Those demonstrations did not stop the authorities from carrying out their preliminary relocation surveys. On the night of 10 December 1959, police and South African troops opened fire on a crowd of Africans, killing 11 and wounding 44 others. (South Africa used the same tactics in its own territory a few months later, massacring 74 Africans demonstrating against the pass laws in the town of Sharpeville.)

Even that violence and various pressures used to force the Africans out did not frighten the Africans into moving to Katutura. Municipal and administration employees were dismissed if they refused to move; refuse was not collected; residents were ordered to demolish houses and they were prevented from building new ones; those who left Windhoek for visits were barred from returning.

South Africa's pressures for resettlement of Africans into Katutura finally brought an end to the old location in 1968. From 1966 on, with more than 6,000 still refusing to move to the new compound at Katutura, authorities stepped up the campaign to abolish the old location by claiming that it had to be closed for reasons of health and sanitation. When the president of SWANU, Gerson Veii, urged inhabitants not to submit to forcible removal, he was arrested for threatening law and order and he

was sentenced to a five-year jail term. In 1968, the area was "deproclaimed" and Africans were no longer legally allowed to be there. Houses were demolished and the area was sprayed and cleaned. Resistance was no longer possible.

A New Six-Year Effort

1960-1961—Ethiopia and Liberia instituted proceedings against South Africa in the International Court of Justice, beginning a six-year effort to solve the problem through a Court judgment.

The two former League Members asked the Court to require South Africa to carry out its obligations and cease violations of the Mandate; to end apartheid *in South West Africa; and to report to the United Nations concerning its administration. The practice of* apartheid, *they argued, was inherently inconsistent with the obligation to promote the well-being and social progress of the inhabitants. Furthermore, they said, South Africa had impeded opportunities for self-determination and had attempted to change the terms of the Mandate without the consent of the United Nations. The Union Government was charged with limiting the franchise to Europeans, refusing equal access to education, suppressing rights and liberties of Africans, segregating residential areas by law according to race, excluding Africans from many occupations, and restricting movement through the pass system.*

The Assembly commended the action taken by Ethiopia and Liberia, which also had the support of the Second Conference of Independent African States held at Addis Ababa. Sixteen newly-independent African Countries had joined the United Nations in 1960; the African-Asian group now constituted nearly half of the Organization's membership. More insistent demands for an end to all vestiges of colonialism were now voiced. In December 1960, a major declaration was adopted by the Assembly: the Declaration on the Granting of Independence to Colonial Countries and Peoples. This proclaimed the necessity of bringing a speedy and unconditional end to all forms of colonialism, and called for immediate steps to transfer all powers to the peoples of Territories not yet independent. The Declaration became the framework within which the United Nations sought to accelerate the advance towards freedom and independence.

An increasingly critical view of South Africa—its apartheid *system, its repressive measures, and its South West African policy—was expressed by most United Nations Members. The Assembly concluded that the South West Africa dispute "has not been and cannot be settled by negotiation", deplored South African policy, deprecated the application of* apartheid, *and called for revocation of laws enforcing it. It called for an end to the "arbitrary imprisonment and deporting of Africans, including the leaders and members of the South West Africa People's Organization"; asked South Africa to punish officers responsible for the killing of Africans at Windhoek; and deplored the methods of intimidation used to force Africans to move to Katutura.*

The situation in South West Africa, the Assembly warned, was "a serious threat to international peace and security". It asked the Committee on South West Africa to go to the Territory to investigate, and to make proposals on steps to achieve a wider measure of self-government which would lead the indigenous inhabitants to independence as soon as possible.

The Committee's efforts to enter South West Africa were rebuffed by South Africa (which became a Republic in 1961, ending its ties to the Commonwealth). Instead the group went to other African countries, interviewed exiles and obtained first-hand reports on conditions. It then advised the Assembly to turn its efforts towards terminating the Mandate, and urged that a United Nations presence be established in South West Africa.

"With increased disquiet", the Assembly noted the progressive deterioration of the situation. No longer waiting for a Trusteeship Agreement, the Assembly set up a new seven-member Special Committee for South West Africa to achieve more far-reaching objectives: the evacuation of all South African military forces, release of political prisoners, repeal of apartheid *laws and practices, United Nations-supervised elections based on universal adult suffrage, and preparations for full independence.*

The Assembly also established a special educational and training programme for the indigenous South West Africans, which has provided scholarships in other countries; the number of candidates able to leave the Territory, however, has been limited.

"Tyrannical . . . repugnant . . . totally unacceptable" were the terms applied by the United Nations to South Africa's policies in Namibia after 1960.

Conditions to which Africans were subjected were depicted in volumes of evidence submitted in the International Court of Justice proceedings—even in material offered by South Africa. In one document, South Africa tried to persuade the Court that Africans were not restricted to unskilled labour by stating there were 21,230 Africans in "skilled and semi-skilled" occupations. Later it was admitted that 14,000 of the skilled and semi-skilled workers actually were domestic servants, laundrywomen, caretakers, cleaners or messengers.

Minimum wages for Africans ranged from six to 11 rand a month, but South Africa assured the Court that workers actually received as much as 35 rand monthly for mine employees—when overtime payments, food and clothing expenses, housing and bonuses were included. According to South Africa, average monthly wages of African workers ranged from 13 rand for domestic servants to 24 rand for industrial labourers and 48 rand for the few teachers, policemen and clerks. (At the same time, the average monthly pay for European mine workers was over 200 rand.)

Although non-whites make up nearly 90 per cent of the labour force in mining and agriculture and half of those in the industrial sector, most skilled and semi-skilled positions are reserved by law or practice to whites. If white applicants are not available in the Territory or South Africa, they are recruited overseas. In mining, job reservation is imposed by law. If a mine is owned by a European, all supervisors must be European. Welfare legislation concerning miners recognizes only those of European descent; non-whites are "labourers" but not "miners". Since virtually all mining is under white management, training and experience which non-whites may acquire is obviously limited.

Job discrimination affects the civil service. In advertising for applicants, the Government often explicitly states that positions are open only to whites.

Under the Master and Servants Proclamation of 1920, an African worker faces penalties of up to three months imprisonment for: (a) failing to begin work at the stipulated time, (b) absenting himself without lawful cause from his place of employment, (c) becoming unfit for work due to intoxication, (d) neglecting his duty or performing it carelessly or im-

properly, (e) making use of his master's horse, vehicle or other property without permission, (f) refusing to obey any command of his master, (g) damaging property wilfully or through neglect or drunkenness, and (h) using abusive language to his master, his master's wife, or any person placed in authority over him.

Mission to Namibia

*1962—The Special Committee for South West Africa sought to visit the Territory. This time South Africa, while refusing to invite the whole Committee, agreed to a visit by the Chairman and Vice-Chairman.**

After visiting the Territory in May, the two officers reported that the administration of South West Africa was pervaded by the rigorous application of apartheid *in all aspects of the lives of Africans, resulting in the complete subordination of their interests to those of the European minority—in contradiction with the principles of the Mandate,' the United Nations Charter, and the Universal Declaration of Human Rights. It was the overwhelming desire of the Africans, they said, that the United Nations should assume direct administration and take steps to grant freedom to the indigenous population.'*

The Chairman and Vice-Chairman recommended that the Assembly consider revoking the Mandate and assuming the Territory's administration. They suggested the possibility of imposing sanctions or employing other means to enforce South Africa's compliance. Their report was submitted to the Assembly by the Special Committee, which stated that it would be difficult to have the Assembly resolutions implemented unless a United Nations presence could be established in South West Africa.

*The work of the Special Committee on South West Africa was taken over by the newly formed Special Committee on decolonization,** which declared that the time had come for urgent and positive United Nations action—including possible sanctions against South Africa—to prevent the annexation of South West Africa and to ensure the Territory's independence at the earliest date.*

(The Assembly's opposition to South African policies went beyond the question of Namibia: for years, it had tried without success to persuade South Africa that the apartheid *system should be ended. Now it called on Governments to break off diplomatic relations with Pretoria, and to boycott South African goods. A Special Committee on* Apartheid *was set up to keep the situation under review. Since the sanctions did not have the support of the Western Powers which were South Africa's major trading partners, the trade boycott had little effect. In the following year the Security Council joined in the action against* apartheid, *calling on all States to cut off the supply of arms to South Africa; but some countries continued to provide arms, drawing a distinction between weapons sent for external defence and arms which might be used to enforce* apartheid.)

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*Victor D. Carpio (Philippines) and Salvador Martinez de Alva (Mexico).

**The full title of this committee, which continues in existence, is the Special Committee on the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. Set up in 1961 with 17 members, it soon was enlarged to 24 members and is commonly known as the Special Committee of 24. As the main United Nations body dealing with the progress of colonial peoples towards independence, it continuously examines conditions in dependent Territories, sends visiting missions, hears petitioners, makes recommendations on measures to be taken to achieve self-government or independence in specific Territories, and brings to the Security Council's attention colonial matters which might affect world peace. While the number of remaining colonial Territories has steadily declined, Namibia and the other Territories of southern Africa remain major concerns of the Special Committee of 24.

Objections Overruled

Meanwhile the International Court issued an important judgment in the continuing legal battle, dismissing South Africa's objections contesting the Court's jurisdiction. The case involved a dispute between the Mandatory and another Member of the League as envisaged in Article 7 of the Mandate, the Court ruled. States which had been Members of the League continued to have the right to invoke the compulsory jurisdiction of the Court, and that right continued to exist for as long as South Africa held on to the right to administer the Territory. Furthermore, the scope of the Mandate provisions indicated that League Members were understood to have a legal right or interest in South Africa's observance of its obligations under the Mandate.

Seven of the 15 judges did not support the ruling.

The Odendaal Commission

In 1962 the South African Government appointed a five-man Commission of Enquiry into South West African Affairs. The group was headed by F. H. Odendaal, Administrator of the Transvaal Province.

The Odendaal Commission's task was to find ways of "further promoting" the inhabitants' welfare, and its eventual recommendations had important effects on developments in Namibia in the late 1960s. The Commission's outlook was:

"Where, owing to fundamental differences in socio-cultural orientation, stages of general development, and ethnic classification, the differences between the groups concerned are of so profound a nature that they cannot be wiped out, a policy of integration is unrealistic, unsound, and undesirable . . . A policy of differentiation must therefore be followed here, under which the various groups are recognized and respected as the basic units of development—that is to say, a policy of protection and advancement of each population group."

A Namibian liberation leader, questioning that line of reasoning, commented: "Separation is said to be a natural process. But why, then, is it imposed by force? And why then is it that whites have the superiority?"

The notion of "separate development" through segregation has been condemned by United Nations bodies. As a Special Rapporteur of the Commission on Human Rights has said: "It may be stated that the system of *apartheid,* and the security measures necessary to suppress opposition to it, are such that it has become necessary for the Government to take powers to interfere with almost every aspect of the private life of the individual. The private life of the African, in particular, is subordinated to the need to keep him in the place designed for him in the society, of which, through no fault of his own, he forms a part."

South Africa's racial policy is clearly expressed in the educational system of Namibia. There are few secondary schools for Africans; most African pupils attend only lower primary grades. Although there were three times as many African as white students in one recent year, the Government expenditure for white schools was four times that provided for the Africans.

The same policy applies to health facilities: in 1967, it was reported there were 27 hospitals (with 1,035 beds) for whites—14 per cent of the population—and 40 others (with 4,734 beds) for Africans and Coloureds. In the northern reserves, where more than half of Namibia's people reside, there were 14 physicians. There has been improvement lately in health facilities, but they lag far behind those available for whites in relative numbers and in sophistication of equipment. The effect of the policy may be seen in the infant mortality rate: South Africa does not provide separate statistics on African health matters in Namibia, but some idea may be obtained from evidence in South Africa itself, where the mortality-rate for African children was as much as 400 per thousand in the rural areas; that of the white children was 27 per thousand.

Mixed marriages are prohibited; sexual relations between whites and non-whites may be punished by up to five years imprisonment. Just as intimacy is punished, so is hostility: a fine or jail term awaits any person who "utters any words or does any other act or thing whatever with intent to promote any feeling of hostility between Natives and Europeans", under a 1928 proclamation. That policy, in practice, is only applied to Non-whites. No white person has ever been charged under that so-called legislation.

1963—The Assembly condemned South Africa for its "persistent refusal" to co-operate with the United Nations, and said that any attempt to annex a part or the whole of the Territory would be an act of aggression.

At the Assembly's request, the Special Committee of 24 studied the influence of foreign economic interests in regard to South West Africa. It concluded that foreign companies shared the responsibility for the suffering of the people, and said their activities constituted one of the main obstacles to the country's development towards independence. The policy of apartheid *enabled foreign companies and local Europeans to reap huge profits but made improvement in African living conditions impossible. The Committee recommended that the Assembly call on countries whose nationals owned and operated companies in South West Africa—especially the United Kingdom and United States—to cease their support of South Africa.*

The Odendaal Commission issued findings and recommendations in 1964, which became a cornerstone of South African policy in the Territory.

The Odendaal Report proposed that 40 per cent of the Territory should be partitioned into 11 separate self-governing "homelands" or "Bantustans" based on non-white ethnic groupings; 43 per cent of the land would be eserved as before for whites. South Africa would take over direct control of the remaining area, including the diamond zone, and would assume some governmental functions formerly held by the Territory's administration and legislature. The white area would become in effect another South African province, and South Africa would retain firm control over the rest of the dismembered Territory—with final authority over the "homelands" set aside for the Ovambos, Kaokovelders, Okavangos, East Caprivians, Damaras, Hereros, Namas, Basters, Tswana and Bushmen. The "homelands" in general would correspond to existing reserves, although some reserve areas were to be increased and others eliminated. Economic development measures were proposed.

In addition to mass relocations of Africans, establishment of the Bantustans in the Police Zone would require some European farmers to sell land to the Government. About 2,000 whites would have to vacate those areas, while nearly 40,000 non-whites would be moved from existing reserves, farms or urban locations to their designated "homelands". Of the Africans in the Police Zone, only about 10 per cent lived in reserves forming parts of the new "homelands".

The South African Government soon issued a white paper agreeing with the basic outline of the Commission, and the South African Parliament gave its stamp of approval. Although the Government said a final decision would not be made while the International Court of Justice case was pending, it proceeded with preliminary steps even before the plans reached the stage of legislation. In the mid-1960s South Africa paid white farmers more than 25 million rand to acquire land for the Bantustans.

1964-1965—The Special Committee of 24 declared that implementation of the Odendaal plans would result in the disintegration of the Territory and its absorption into South Africa. It called on South Africa to desist from carrying out the recommendations; drew the Security Council's attention to the critical situation; asked the Council and the Assembly to take steps to safeguard the integrity of the Territory; and appealed to all States to give the Africans of Namibia the moral and material support to help them accede to independence.

Violation of Mandate

The Assembly, approving the Special Committee's reports, stated that any attempt to partition the Territory would violate the Mandate and that any annexation attempt would be an act of aggression. It appealed to all States to aid the people in their legitimate struggle for freedom and independence, and condemned the policies of financial interests exploiting the human and material resources of South West Africa.

The International Court of Justice continued its hearings, listening to the testimony of witnesses as well as oral arguments of the lawyers.

In administration of the reserves and in the plans for Bantustans, South Africa has encouraged tribal divisions (including tribes within tribes) and has made use of the system of chiefs or headmen appointed and paid by the Government. Those appointed chiefs and headmen are considered mere puppets by Namibians who have testified before United Nations bodies.

"He is not liked by the people because he was appointed and his allegiance is to the people who appointed him and who are paying him", one petitioner said of a chief in his area. "He does not actually care for the interests of the people, he cares only for where the money is coming from." Another stated: "Headmen are used to oppress us. This is not the first time that foreigners have tried to rule indirectly; we know that only those who are prepared to do what their masters tell them become headmen."

Government regulations require the chiefs to carry out orders of the commissioner or superintendent in charge of their areas. They must assist in collection of taxes, prevention of illegal occupation of land, supply of labour, and crime prevention. They must report the unauthorized presence

of strange persons, illicit introduction of arms, and meetings for undesirable or unlawful purposes. They are prohibited from taking part in any political association, and may be suspended or dismissed if they do not carry out their duties.

The South West Africa National Union (SWANU) told the United Nations:

> "The South African agents in our country are methodically wooing and buying off chiefs, headmen and other frustrated elements in collaborating with their diabolical schemes . . . The main function of these 'homeland' schemes is not only to facilitate the recruitment of cheap labour in the mines, white farms and industry, but also for defence purposes. The 'homelands' are the best possible defence outposts for the *apartheid* system and the continuation of colonialism in our country. For once the people are permanently separated, petty jealousy and tribal rivalry will constitute the order of the day. The exploitation of these petty differences will provide the South African régime with a very strong weapon in the defence of its vile schemes."

The South West Africa People's Organization commented:

> "The South African attempt to impose Bantustans in Namibia through chiefs will ultimately prove to be an inconsequential gesture, since chieftainship, as an institution, had long lost its potency and value in all of Namibia. As the terror rages against the population in the northern region and across Namibia, counter-terror will in turn unfold against the rule and lives of all the chiefs who range themselves with the white racists against their people."

The suggestion that the "homelands" could become economically viable units has been ridiculed by Namibians and by Opposition members of South Africa's Parliament. Except for Ovamboland, each "homeland" would have only from 3,000 to 30,000 residents. Sir de Villers Graaf, South African Opposition leader, said the smallness of the groups involved meant their "independence" would be a mockery and a delusion; he termed the plans impractical, dangerous and futile.

A young Namibian school teacher, testifying before a United Nations expert group investigating human rights violations, observed that for many an Afriean the assigned "homeland" was hundreds or thousands of miles from where he lived. "When he comes there he will not have any food; there will be no provisions for him to make a living, because there will be no work for him. And if a person does not eat and a person does not have means of getting food, he has to die; and I think there is a tendency to starve our people . . . and if these people do not starve, they will forever remain dependents of South Africa."

1966 Court Decision: A Turning-Point

18 July 1966—This date marked a turning-point in the struggle over South West Africa. After six years of deliberations, after sifting through voluminous documents, after long hearings of arguments on both sides covering every aspect of the dispute, the International Court of Justice announced its conclusion in the case of Ethiopia and Liberia v. *South Africa:*

The Court, it decided, could not rule on the substance of the case because Ethiopia and Liberia had not established any legal right or interest in the matter.

Although many observers had believed this question had been disposed of by the Court in its 1962 judgment—in which it affirmed the applicability of Article 7 of the Mandate, providing for legal action by League Members—the Court now declared that the League Covenant made no provision for individual League Members to institute actions in regard to the administration of a Mandate. The Mandatories, it said, were to be "agents of the League" and not of the individual countries in the League; and the interest of individual States in regard to the Mandates could be exercised only through the appropriate organs of the international body. Therefore, Ethiopia and Liberia were not entitled to the pronouncements they had asked of the Court, even if the various allegations of Mandate violations had been established. The "moral ideal" must not be confused with the legal rules, the Court declared.

As in the 1962 decision, the Court was divided. The composition of the Court had changed since 1962: one judge had died and another was unable to take part due to illness. Both had supported the earlier Court decisions upholding the United Nations position. With seven judges in favour and seven against, the President of the Court, Sir Percy Spender of Australia, had used his second "casting vote" to break the tie with an 8-7 judgment.

1966 and After: The Mandate Ends

The Court judgment stunned and disappointed most United Nations Members. Only South Africa and the white settlers of South West Africa were jubilant: "The bars in Windhoek stayed open all night", as one reporter wrote. Twenty years of efforts to change South Africa's attitude had gone by without results, and the International Court of Justice had decided by a one-vote margin that it could not comment on the substance of the case.

For the people of Namibia, it was a painful blow. One Namibian declared: "We felt betrayed . . . Some felt that we would secure our freedom only by fighting for it."

Two weeks after the Court's decision, 35 African countries requested that the problem of Namibia be considered as a priority topic at the Assembly's autumn 1966 session. The judicial path seemed to be closed; the Assembly itself was called upon to act.

Before the Assembly convened, the Special Committee of 24 recommended the termination of South Africa's rights as Mandatory Power, to be followed by United Nations administration of the Territory in preparation for its independence. Expressing regret over the Court judgment, the Committee said the ruling did not invalidate the Court's earlier Advisory Opinions "which have left no doubt regarding the obligations of South Africa and the supervisory powers of the United Nations".

Mandate Ended

In the month-long Assembly debate, most speakers agreed with this view. On 27 October 1966, the Assembly took an historic decision: *It terminated the Mandate and declared that South West Africa henceforth was under the direct responsibility of the United Nations.*

Recalling that the Court's Advisory Opinions had established the supervisory powers of the United Nations, the Assembly:

—Reaffirmed that the people had the inalienable right to self-determination, freedom and independence;

—Declared that South Africa had failed to ensure the moral and material well-being and security of the indigenous inhabitants and had in fact disavowed the Mandate;

—Called on South Africa to refrain from any action tending to alter the Territory's international status;

—Resolved that the United Nations must discharge its responsibilities with respect to South West Africa; and

—Established a 14-member *Ad Hoc* Committee for South West Africa to recommend practical means by which the Territory should be administered, so as to enable the people to achieve independence.

The resolution was adopted by 114 votes in favour to 2 against (Portugal and South Africa), with 3 abstentions (France, Malawi and the United Kingdom).

South Africa was not moved. In its view, the United Nations had no right to terminate unilaterally its right to administer South West Africa. Prime Minister Vorster said his Government would take no action on the resolution. "The Government does not want to create even an impression that it considers itself bound by that unlawful resolution or that it will let itself be illegally prevented from administering the Territory in accordance with the spirit of the Mandate", he declared. In later communications to the United Nations, South Africa kept to the same position.

The *Ad Hoc* Committee was divided as to what the next step should be now that the Mandate was terminated. The majority supported establishment of a United Nations Council to administer the Territory until independence. Canada, Italy and the United States called for appointment of a special representative who would survey the situation, establish all necessary contacts and determine the conditions required for independence. Czechoslovakia and the Soviet Union, opposing direct United Nations administration, proposed that the Assembly immediately declare the Territory independent and enable the Organization of African Unity (OAU) to assist the national liberation movement and the formation of a new Government

Council Formed

In a special session from 21 April to 13 June 1967, the Assembly debated the proposals. Its decision was that, having assumed direct responsibility for the Territory, "it has thereupon become incumbent upon the United Nations to give effect to its obligations by taking practical steps to transfer powers to the people of South West Africa". With that objective the Assembly established an 11-member United Nations Council for South West Africa,* aided by a United Nations Commissioner. It requested the

*Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, United Arab Republic, Yugoslavia and Zambia.

Council to enter into contact with South African authorities to lay down procedures for the transfer of control.

The Council was asked by the Assembly to proceed to South West Africa to take over the administration, to ensure the withdrawal of South African personnel and forces, to promulgate laws until a legislative assembly was established through elections based on universal adult suffrage, to consult with the people to draw up a constitution, and to transfer all powers to the people upon the declaration of independence.

South West Africa, the Assembly declared, "shall become independent on a date to be fixed in accordance with the wishes of the people" and the Council "shall do all in its power to enable independence to be attained by June 1968". The Security Council was requested to take "all appropriate measures" to enable the Council for South West Africa to carry out its tasks.

That resolution—sponsored by African, Asian and Latin American countries—was adopted on 19 May 1967 by 85 votes in favour to 2 against (Portugal and South Africa), with 30 abstentions. The major Powers were among those abstaining. The Western nations, while stating their opposition to South Africa's *apartheid* policy and its application to a Territory over which it no longer had a Mandate, considered the plans for United Nations administration impractical as long as South Africa refused to comply. The socialist States held that the people of Namibia should have independence at once, without an interim United Nations administration.

The Assembly followed its initial actions with resolutions in which it:

—Declared that the continued presence of South African authorities was a flagrant violation of the Territory's international status;

—Called on South Africa to withdraw from the Territory, unconditionally and without delay, all its military and police forces as well as its administration;

—Requested the Security Council to take effective measures to ensure the removal of South Africa's presence in the Territory;

—Appealed to all Members, particularly the main trading partners of South Africa, to take effective economic and other measures to ensure South Africa's withdrawal;

—Condemned South Africa for obstructing efforts of the Council for South West Africa and for actions designed to consolidate its illegal control over the Territory;

—Condemned the actions of States which encouraged South Africa to defy the United Nations;

—Proclaimed that in accordance with the desires of the people the Territory henceforth would be known as Namibia. (With this decision in 1968, the Council for South West Africa became the Council for Namibia.)

Just as it had refused to accept the Assembly's termination of the Mandate, South Africa ignored the United Nations machinery for administering the Territory and it refused to withdraw.

South Africa's Defiance

In April 1968, the Council for Namibia went to Africa and sought to enter the Territory, but was unable to do so because of South Africa's defiance of United Nations authority. The visit was useful, however, the

Council reported. In Dar es Salaam and Lusaka, it had met with representatives of the people of Namibia and obtained their views on problems confronting them. Since then the Council has persevered in its efforts to carry out its tasks. As the Secretary-General, U Thant, has observed, it "remains in effect a Government-in-exile".

"As the body charged with the administration of the Territory, the Council has sought to exercise its authority as much as possible under prevailing circumstances", the Council stated. "It has been deeply conscious of the necessity of associating the Namibian people as closely as possible with its work, of asserting the special status of Namibians abroad and, wherever practicable, of ensuring that such persons receive the education and training which will enable them to serve their country upon independence." Council activities have related to issuance of travel documents for Namibians permitting their movement outside the Territory (Namibians have termed the documents "United Nations passports"), efforts to provide financial and technical assistance, organization of an educational programme for Namibians, and the continuing scrutiny of developments in the Territory.

The Council has expressed the conviction that South Africa will not withdraw unless "forceful measures" are taken, and has warned that the Republic's refusal to comply with United Nations decisions "inevitably will lead to the outbreak of violence and racial war". Actions which Governments could take to support its efforts have been proposed on several occasions by the Council: all countries should pursue relations in regard to Namibia exclusively with the Council; they also should ensure that companies with interests in Namibia transact business through the Council and turn over to the Council royalties for their operations in the Territory. None of the international firms concerned has taken such action.

The Council for Namibia has closely followed events in the Territory, reporting developments to the Assembly and the Security Council. It has denounced the growing repression by South African authorities, the forced removal of Africans, the steady movement towards dismemberment and annexation of Namibia, and the travesties of justice in South African trials of Namibians.

Liberation Movement

The liberation movement in Namibia had become more militant in the mid-1960s. After the Court declined to rule on the question, African nationalist organizations stepped up their activities aimed at ending South African rule.

In September 1966, both the South West Africa People's Organization (SWAPO) and the South African authorities reported a clash between African freedom fighters and South African soldiers in the Ovamboland area. According to South African officials, the SWAPO-organized "terrorists" were being trained in guerrilla warfare outside the country, then returning across the border with arms and ammunition. "It is difficult to apprehend these terrorists because they are moving continuously", a South African

security official complained. A number of SWAPO and SWANU officials and members were arrested; others carried on the struggle from bases outside Namibia.

On several occasions in 1968, freedom fighters battled South African police in the Eastern Caprivi Strip. The SWAPO said the liberation force had invaded an airfield, killed South African soldiers and damaged military installations. After first denying those reports, South Africa admitted that "terrorist" activities had required the dispatch of hundreds of police reinforcements to suppress the guerrillas. About 2,000 "terrorists" were being trained abroad by SWAPO and the African National Congress of South Africa, it was stated, and the "terrorists" were moving from town to town to enlist Africans in the resistance.

The Council for Namibia, receiving information that 46 Namibians had been killed by South African forces in the Caprivi Strip, condemned those "atrocities" and called for action to prevent further massacres of Namibians struggling for freedom.

The SWAPO claimed successes for the nationalists in clashes with South African units, and South Africa's concern over security became evident. South African officials reported a considerable expansion in training of police and military personnel in guerrilla-type warfare, and admitted the need for continued stationing of units on Namibia's borders to block "terrorist" infiltration.

In 1967 South Africa's Parliament enacted a new security law—the Terrorism Act—to deal with what it considered to be a growing threat to the State. The Terrorism Act turned even ordinary acts into major crimes if they were committed with the intention of undermining law and order. Under that law—which authorizes the death penalty or life imprisonment for offenders—it is enough for the prosecution to prove a certain act was committed and that the act had or might have had results such as "embarrassing the administration of the affairs of the State". An official South African statement explained, "the accused is then presumed to have committed the act with the intention of endangering the maintenance of law and order, unless he himself proves otherwise". The Terrorism Act admittedly was of a far-reaching nature, the Government paper declared, but terrorism was on the increase and the Government "had to prepare to cope with a continuation of this evil".

Not only was the law made applicable to Namibia—over which South Africa had no lawful rights—but it was made retroactive, so that acts committed at any time in the previous five years had become crimes.

"Terrorist" Trial

Immediately after the Terrorism Act became law, 37 Namibians were brought to trial on charges under the new act. The trial was held not in Namibia but in Pretoria, and all defendants were African political leaders or members of the liberation movement. The prosecution claimed they had taken part in a "terrorist" conspiracy to overthrow "law and order" in

Namibia. They had been trained in the use of firearms and explosives, and in hand-to-hand fighting and karate, it was charged; they had infiltrated into Ovamboland to recruit others to help in the uprising, and had engaged in acts of violence (including one murder) and robberies.

The trial evoked widespread international protests. The Council for Namibia and the Special Committee of 24, the Assembly, the Commission on Human Rights, and finally the Security Council denounced the illegal arrest, deportation and trial of the Namibians as a flagrant violation of human rights and of the international status of the Territory. The vague provisions and severe penalties of the law, the ill-defined charges, the retroactive prosecutions, the removal of the defendants from Namibia to South Africa, and the conduct of the trial itself were condemned. Despite demands that the trial be discontinued, Prime Minister Vorster declared that South Africa would not allow anything or anybody to interfere with the trial.

A professor of international law at Princeton University, Richard H. Falk, attended the trial as an observer for the International Commission of Jurists and criticized many aspects of the procedure as unfair to the defendants. He described the atmosphere:

> "During the trial, the prisoners were referred to by numbers pinned to their shirts or jackets . . . This impersonal mode of reference would not have been used if the prisoners had been white people. The use of numbers rather than names is consistent with the general depersonalization and dehumanization of Africans that pervades every aspect of *apartheid* as an operative system of racial administration.
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> "Each day the prisoners were taken back and forth from the Pretoria Jail in a large van. This van delivered the defendants to a cage that had been placed in a small enclosed courtyard . . . Outside the cage were a large number of uniformed policemen carrying sten-guns or holding onto aggressive police dogs. These dogs were trained to bark furiously at the smell or sight of Africans.
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> "The prisoners were led through a gauntlet of police and barking dogs from their cage to the courtroom . . . The lawyers for the defence told me that many (if not all) of the defendants were terrified by this daily experience. I stood in the yard and was very frightened by the generally menacing quality of the scene."

Professor Falk and another observer—Arthur Larson, representing the World Council of Churches—cited evidence of torture of the prisoners. Mr. Larson later wrote:

> "Much of the evidence presented at the trial had been procured by the arrest of 180 witnesses and the holding of them in solitary confinement for unlimited periods. There was a considerable amount of torture of prisoners and witnesses. Some of the police testimony was so obviously perjured as to be ludicrous, as in the case of one officer's testimony that each of the accused he caught voluntarily blurted out a full confession, after having been assured of his legal right to remain silent, each confession being practically identical to every other confession. When asked what happened to the written statements of confession he said these prisoners had signed, the response was that it was raining very hard and all the written confessions got soaked and disintegrated . . . Given the background and procedure in this affair, one simply cannot assume that anything in the record is reliable, whether purported confessions or anything else."

Early in 1968 the verdicts were announced. The judge found 34 defendants guilty; two were acquitted. (One defendant had died during the trial.) Nineteen of the men were sentenced to life imprisonment; the others received terms of up to 20 years.

Again there were strong protests. The Security Council unanimously censured South Africa's flagrant defiance of its earlier call for discontinuance of the trial and of United Nations authority.

Another group of eight Namibians went on trial in the summer of 1969 in Windhoek. The defendants, who reportedly had been imprisoned in Pretoria for as long as three years before the trial, faced charges similar to those made in the previous trial. Their court-appointed lawyers admitted the guilt of five of the men, who were sentenced to life imprisonment. A sixth received an 18-year term; two were acquitted.

Many witnesses before the Special Committee of 24 and the *Ad Hoc* Working Group of Experts of the Commission on Human Rights have testified regarding their personal experiences of the use of torture by South African police. The Commission's expert group has called for the appointment of a United Nations commissioner to aid Namibian citizens arrested and detained, and it has urged that South Africa observe the Geneva Conventions on treatment of prisoners of war and on protection of civilians. The Special Rapporteur of the Human Rights Commission (Manouchehr Ganji of Iran), who compiled evidence on torture and ill-treatment of Namibian prisoners, proposed that the Assembly create a judicial committee for Namibia to work for the detection, exposure and repression of crimes committed by the authorities against the Territory's inhabitants, and to fasten responsibility on the perpetrators for eventual trial before an international tribunal. (The proposal was submitted recently by the Assembly to Member States for comments.)

South Africa continued to ignore United Nations appeals on behalf of political prisoners and the indigenous people of Namibia generally, and went on with its plans for creating "homelands" and consolidating South African control of the Territory.

"Native Nations"

In 1968 the South African Pariament provided the legislation authorizing establishment of the "homelands"—the Development of Native Nations in South West Africa Act. It provided for creation of six "native nations": Ovamboland, Daramaland, Hereroland, Kaokoland, Okavangoland, and Eastern Caprivi. The law authorized the State President of South Africa to establish legislative and executive councils and other governing bodies in those Bantustans. The councils would be empowered to enact laws on specified internal matters: education, welfare services, taxation, agriculture and industry.

The manner in which the "native nation" councils are chosen is left to the discretion of the State President who retains the right to amend or repeal legislation, to make new laws for any "native nation" by mere proclamation, to set aside areas for other "native nations", and to replace the government of any tribe or community if he considers it expedient.

"With so many restrictions, the powers of the legislative councils are

meaningless", according to a report of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. "The establishment of so-called 'native nations' would not therefore allow the African population a real and effective participation in the affairs of the Territory." Indeed, in view of the powers reserved to South Africa in the "self-governing" nations, there seemed to be little difference between the 1968 Act and the 1928 proclamation which had given the Administrator of South West Africa (later the State President) "all political power and authority which according to the laws, customs and usages of natives, are held and enjoyed by any supreme or paramount native chief".

The first session of Ovamboland's legislative council began on 17 October 1968 with an address by South Africa's Minister of Bantu Administration and Development, who assured the Ovambos that they were now rulers of their own "homeland"; South Africa would remain Ovamboland's best friend and it would value Ovamboland's assistance in stamping out "elements of terrorism and anarchy". Ovamboland's chief councillor, Chief Oshana Shiimi, was reported to have promised in reply that "terrorists" would not be tolerated. South African officials said the traditional chiefs had accepted the principle of elections to the legislative council, but it was too early to introduce an electoral system.

The Ovamboland "Government" is "a 'Government' which has nothing in common with the traditions of the people", the South West African National Union declared in a statement before the Council for Namibia. "This 'Government' for the Ovambo people and not of them is staffed mainly by appointees of the South African régime and paid chiefs, who are liable to be dismissed if they do not carry out the orders of their masters." A representative of the South West Africa People's Organization commented: "We see from the division of the functions that the South African Government will be the real sovereign power there, for a country which does not control its defence department and foreign affairs is never sovereign." Under that scheme, he said, Africans would be uprooted and forced into artificial ethnic groupings while "the bulk of the habitable land is reserved, together with all the diamond and most of the other mines, for the white settlers who—Boer tribe, German tribe, English tribe—will remain together as before, as one tribe".

South Africa continued its attempts to move Africans to the areas which were to become "native nations", applying pressure to those who resisted. The Herero population—most of whom live outside the designated "homeland"—have opposed resettlement. The traditional chief of the 35,000 Hereros, the late Hosea Kutako (not a South African appointee), protested the plan. He described the designated area as "semi-desert" and charged that the Government had threatened to cut water supplies to force the people to move from existing Herero reserves. As for the nomadic Bushmen, South Africa was trying to lure them to new areas with free food and tobacco.

Despite repeated United Nations condemnations and rejection by the Territory's inhabitants of its policies, South Africa recently has

undertaken further measures for implementation of its "homeland" scheme.

On 23 March 1972, immediately after the visit of the Secretary-General, South Africa officially opened a Legislative Council in the Eastern Caprivi. That "homeland" borders Botswana to the south and Angola and Zambia to the north.

On 17 July 1972, the government-appointed Chief Councillor of Kavango announced that he had requested the South African Government to "grant self-government to Kavango" and to take the necessary legal steps to ensure:

(a) The Territory known as Kavango be declared a self-governing Territory, and that the Executive Council be replaced by a cabinet consisting of a chief minister and ministers.

(b) The Kavango Legislative Council be authorized to make laws instead of enactments, and be given greater authority.

Subsequently, the South African Government announced that Damaraland would become the fourth "homeland" to be given "self-government". The Damaras were not satisfied with the conditions for "self-government" the South African Government wanted to impose; the matter remains undecided.

Other plans include establishment of a "homeland" comprising areas in the Berseba and Tses Reserves in the district of Keetmanshoop, the Soromas Reserve in the district of Bethanie, the Gibion Reserve in the district of Gibion and lands in the districts of Bethanie and Keetmanshoop.

The Homelands Act Amended

In the spring of 1973 the South African Parliament amended the so-called "Development of Self-Government for Native Nations in South West Africa Act" of 1968, to the effect that the "bantustans" can be declared self-governing. A memorandum which had accompanied the bill stated clearly that "the Government of the Republic reaffirms its often repeated assurance that it is the firm and irrevocable intention of the Government to lead individual nations in South West Africa and the Eastern Caprivi Strip to self-government and independence".

In accordance with the amended act, Ovamboland on 1 May was proclaimed a "self-governing region", and an "election" was arranged for 1 and 2 August to fill 56 seats in the so-called legislative assembly, imposed upon the people of Ovamboland. The nature of that "election" may be understood when it is realized that 35 seats were filled beforehand by appointment; of the remaining 21 seats, only 6 were contested. Even in those six cases there was no opportunity for a free choice by the electorate; those standing for election were puppets of the illegal régime who had hurriedly organized themselves as the "Ovambo Independence Party" described by the "Commissioner General for Native Nations of South West Africa" as a "party consisting of those who felt the Ovambo bantustan should be Ovambo-oriented and who felt that the Ovambo should be first and South West Africa second".

The so-called elections were opposed by the Namibian people, who, under the leadership of SWAPO, organized a successful boycott. Only 1.6 per cent of the 50,000 electors voted.

On 11 May, Kavangoland in the north-east of Namibia was proclaimed the second "self-governing homeland". It brought with it a change in nomenclature: the Kavango Executive Council became a "Cabinet" and Chief Linus Shashipapo became "Chief Minister".

Security Council Action

In 1969 in another move to implement the Odendaal recommendations, South Africa enacted the South West Africa Affairs Act. That law provided for the transfer to South Africa of most powers exercised by Namibia's all-white Legislative Assembly. Although the change was of little immediate significance in the lives of Africans of Namibia, it was viewed by United Nations organs as a further attempt to annex the Territory—an effort contradicting South Africa's assurance that the arrangements would not alter its international status.

The actions of the South African Government, designed to consolidate its illegal control and to destroy the national unity and territorial integrity of Namibia, were condemned by the General Assembly. Early in 1969, the "progressive deterioration" resulting from those measures was brought to the Security Council's attention by the Council for Namibia. The Assembly and the Special Committee of 24 asked for urgent action by the Security Council, and 46 Member States requested the Council to meet to deal with the "grave threat to international peace and security".

On 20 March 1969, the Security Council met and adopted a resolution calling on South Africa to withdraw "immediately" from Namibia. If it failed to do so, the Council said, it would decide upon "necessary steps or measures in accordance with the Charter".

The Council specifically recognized the termination of the Mandate by the Assembly, described the continued presence of South Africa in the Territory as illegal and detrimental to the people's interests, and condemned South Africa's refusal to comply with Assembly and Council decisions. It asked all States to exert their influence to obtain South Africa's compliance. Referring to the latest measures taken, it declared that establishment of Bantustans was contrary to the United Nations Charter, and that South Africa had no right to enact the South West Africa Affairs Bill (which had not yet become law). Later it termed all such actions by South Africa after termination of the Mandate "illegal and invalid".

All but two Security Council members supported the resolution; France and the United Kingdom abstained.

On 12 August 1969, the Security Council again condemned South Africa for its "persistent defiance" and it decided that South Africa's continued occupation of Namibia "constitutes an aggressive encroachment on the authority of the United Nations".

The Council set a deadline of 4 October 1969 for South Africa's withdrawal. It recognized the legitimacy of the people's struggle against the illegal presence of the South African authorities, called on all States to refrain from dealings with South Africa purporting to act in behalf of Namibia, and requested them to increase their moral and material assistance to the Namibians. (Again France and the United Kingdom abstained, together with Finland and the United States.)

Five months later, long after the deadline had passed, the Security Council established an *ad hoc* sub-committee to study ways and means of implementing the Council's resolutions on Namibia. The sub-committee, composed of all 15 Security Council members, obtained information from a number of Governments on their trade and other relations concerning Namibia. It submitted to the Council proposals on courses of action.

A Call to All States

Some of the proposals were reflected in Security Council resolutions of 29 July 1970, by which the Council (with France and the United Kingdom abstaining) called on all States to:

—Refrain from any relations with South Africa implying recognition of its authority over Namibia (or in the case of countries with diplomatic relations with South Africa, to declare formally such nonrecognition);

—Ensure that companies owned or controlled by States cease all dealings with respect to commercial or industrial enterprises or concessions in Namibia;

—Withhold loans and credits or other financial support that would be used by their nationals or companies to facilitate trade or commerce with Namibia;

—Discourage their nationals and companies from investing in Namibia;

—Withhold protection of such investment against claims of a future lawful Government of Namibia; and

—Discourage tourism and emigration to Namibia.

The Security Council asked the International Court of Justice for an Advisory Opinion on the question of what consequences for States resulted from South Africa's continued presence in Namibia, in violation of the Council's resolutions. To assist Namibians who have suffered from persecution and to finance an education and training programme for Namibians, the Assembly recommended that the Assembly create a United Nations Fund for Namibia.

The re-established *ad hoc* sub-committee was asked to study further recommendations on means of implementing the United Nations demands.*

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*In another 1970 decision on South Africa, the Security Council termed the continued application of *apartheid* and the constant build-up of South African military forces "a potential threat to international peace and security", and it called on all States to strengthen and strictly to observe the arms embargo originally called for in 1963. The Council is empowered under Chapter VII of the Charter to invoke mandatory sanctions (binding upon Members) in cases of threats to the peace, and has done so in regard to Southern Rhodesia; however, Chapter VII has not been applied in the case of South Africa. Thus, neither the Council's call for an arms embargo nor the Assembly's appeal for a trade boycott, had the force of a Chapter VII directive to Member States.

The Court Opinion of 1971

The specific question submitted to the International Court of Justice for an Advisory Opinion was:

> "What are the legal consequences for States of the continued presence of South Africa in Namibia, notwithstanding Security Council resolution 276 (1970)" which had declared that presence to be illegal and had called upon States to act accordingly.

The Court, in other words, was asked to express itself on the legality of Security Council resolution 276 endorsing termination of the Mandate decided by General Assembly resolution 2145 (XXI). The purpose of the reference was to decide once and for all whether those two principal United Nations organs had acted *intra* or *ultra vires*.

The Court ruling of 21 June 1971 has become a landmark in the evolution of international law and in the history of Namibia. The Court held by 13 votes to 2,

> (1) that, the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to withdraw its administration from Namibia immediately and thus put an end to its occupation of the Territory;

by 11 votes to 4,

> (2) that States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration;
>
> (3) that it is incumbent upon States which are not Members of the United Nations to give assistance, within the scope of subparagraph (2) above, in the action which has been taken by the United Nations with regard to Namibia.

It was for the Security Council to act on the advice it had received. When it began in September and October 1971 to discuss the implications of the advice, South Africa announced through its Foreign Minister that it rejected the Court's rulings *in toto,* that his Government would continue to administer the Territory, and that its administration would continue existing practices "with a view to self-determination for all population groups". What that meant was clear enough. The Security Council rejected this position. It adopted, on 20 October 1971, resolution 301 (1971) which took note with appreciation of the International Court's Advisory Opinion on

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In recent years South Africa's military forces and budget have been expanding at an unprecedented rate and the country has become—in terms of size and wealth—one of the most heavily armed countries in the world. The defence budget for 1973-1974 at £306m was up one third over that for the previous 12 month period and it is 15 times that prevailing at the time of the Sharpeville Massacre. That, combined with the excessive expansion of police and para-military forces, is clearly related to the tense domestic situation in the Republic, and the growing strength of the liberation movement in Namibia. Military and police power deployed in Namibia is in fact relatively larger than that stationed in the Republic, given their size and population.

Namibia and *agreed with its conclusion* cited above. In addition to calling upon States to consider in their dealings with the Government of South Africa the rights of the people of Namibia in accordance with positions laid down by the Court, the Security Council reaffirmed South African obligations vis-à-vis Namibia, and *declared its continued presence in the Territory an internationally wrongful act, for which it remained accountable to the international community*. Further refusal of the South African Government to withdraw from Namibia could, in the view of the Security Council, *create conditions detrimental to the maintenance of peace and security in the region*. The resolution furthermore indicated the consequences of the Court's Opinion on matters pertaining to Namibia in private as well as in public international law.

The resolution was adopted by 13 votes to none with France and the United Kingdom abstaining.

Reaction inside Namibia to the Court's decision and the Security Council's acceptance of it was one of relief and renewed hope in some quarters that the withdrawal of South Africa from the Territory was only a matter of time. David Herero, the National Chairman of SWAPO in Windhoek, emphasized, however, that whatever the international community was doing, liberation of Namibia was primarily a matter to be decided by the people in the Territory. That view was shared by political leaders of all shades of opinion, and in November 1971 an alliance of 10 groups established the *National Convention*, comprising the followers of SWAPO, SWANU and Chief Kapuuo of NUDO, among others. It was loosely organized, but it was an important indication that regardless of political outlook, or tribal origin, the Namibians intended to work together for the common goal.

South Africa not only ignored decisions of the Court and the Security Council, but it embarked on further defiance. It intensified implementation of its Bantustan policy by hastening establishment of more homelands, strengthening the police forces designed to suppress the liberation movements by recruiting blacks, Coloureds and Indians from inside South Africa.

The Security Council, meeting in Addis Ababa in February 1972, viewed those developments, which completely disregarded provisions of its resolution 301 (1971) adopted less than half a year ago, with great concern. Labour unrest, resulting from appalling conditions and slave wages, had led to brutal repression and a sham settlement early in the year. The Council emphatically condemned the measures taken against the workers, and called on South Africa to abolish immediately a system of labour in conflict with the basic provisions of the Universal Declaration of Human Rights (resolution 310 (1972)).

The Security Council, in another resolution (309 (1972)), went beyond condemnation. It directed the Secretary-General to initiate contacts with all parties concerned "in order to enable the people of Namibia, freely and with strict regard to the principles of human equality, to exercise their right of self-determination and independence". The Government of South Africa was called upon to co-operate fully with the Secretary-General in implementing the resolution.

The Secretary-General, in pursuance of the resolution, proceeded to South Africa in the spring of 1972 where he had extensive discussions with the Prime Minister and prominent members of the Government. He paid a short visit to Namibia, where, under not fully satisfactory conditions, he consulted with the Namibian leaders and was received with great enthusiasm. In August the Security Council extended the mandate of the Secretary-General which involved the dispatch of a special representative to the area. The latter, Dr. A. M. Escher, a former Swiss diplomat, spent time in Namibia, heard Namibians of every shade of opinion express themselves for self-government and for independence but he failed to obtain any positive commitment from the South African Government. On 6 December the Security Council, by resolution 313 (1972), ended Mr. Escher's assignment and invited the Secretary-General to continue his contacts with all parties concerned regarding establishment of the necessary conditions to enable the people of Namibia to exercise their right to self-determination and independence. The negotiations took place in New York City and Geneva, on which the Secretary-General reported on 30 April 1973.

The negotiations revealed that in ambiguous terms South Africa was not excluding constitutional developments other than those based on homelands, that the stage of self-determination might be reached within 10 years, that freedom of expression, political organization and movement would be granted subject to reservations that, in fact, would negate them. Nowhere did the South African Government indicate that it considered United Nations resolutions on Namibia an acceptable basis for discussion.

The Secretary-General concluded that the position of the Government of South Africa was far from coinciding with that established in United Nations resolutions on Namibia. While he considered that it made clear South Africa's position on some basic questions, it did not provide complete and unequivocal clarification of South Africa's policy in regard to self-determination and independence for Namibia envisaged in resolution 323 (1972). The Secretary-General left it to the Security Council to decide whether the contacts—which would require time and protracted discussion —should be continued.

The Council for Namibia, in the Lusaka Declaration on 14 June 1973, termed the results of the contacts as laid down in the Secretary-General's report not only unsatisfactory but also counter-productive and it called for their discontinuation. Other United Nations organs and conferences, as well as the Organization of African Unity, voiced the same position. When the Security Council met in December 1973 to discuss the report, it drew the same conclusion. There seemed to be a consensus that none of South Africa's promises to the Secretary-General, however vague, seemed intended to be kept. Implementation of the homelands policy was continuing unabated, and instead of freedom of expression and movement, as promised, arrests of Namibians who had talked with the Secretary-General followed. A new, more ominous, element was introduced: public flogging of political opponents by the so-called authorities in the homelands. As part of the judicial system it had become obsolete for decades, and to allow its revival

was a complete denial of human rights, of the obligations of South Africa under the Mandate and under other international instruments. It was worse than that: it instilled a sense of power and authority in the authorities set up in the homelands to be used in a perverse way to humiliate those fighting for human dignity and for independence of their country.

This and other repressions were continued behind the smokescreen of unending discussions with the Secretary-General. The Security Council, considering that its authority was being misused, decided to discontinue the contacts.

A few days later the General Assembly recognized SWAPO as the authentic liberation movement in Namibia and invited the Security Council to consider taking effective measures in accordance with the relevant chapters of the Charter to end South Africa's illegal occupation of Namibia. It authorized the Council for Namibia, as the legal authority for Namibia, to represent Namibian interests in the specialized agencies and in the international community. In May 1974, in a historic session of the World Health Assembly, Namibia was admitted as an associate member of the World Health Organization.

The General Assembly did more. It elected Sean MacBride, a former Foreign Minister of Ireland and a staunch proponent of human rights and freedoms, to the post of United Nations Commissioner for Namibia, the position of which had never been clearly defined. A new chapter in the history of the Territory had been started. Both the Council for Namibia, and the Commissioner, whose activities had been somewhat limited while the contacts of the Secretary-General were proceeding, were now able to resume their role as the principal proponents in the struggle for Namibia within the international community.

The Armed Struggle

No people can win freedom by outside action alone. The Namibians are fully aware of this, and SWAPO has been fighting for long years, against heavy odds, and with frightful losses. That is no boast on the part of the liberation movement; the South African authorities are year in, year out, obliged to announce their own deaths and casualties. The Namibian freedom fighters are not favoured by geographic conditions of their comrades in other colonial countries of Africa, and thus have not been able to establish an administration on part of their own soil, but their activity is of such scope as to require a permanent state of alert from the occupying power. Whether in forms of actual warfare or of sabotage, they show that they are not awaiting passively what the international community can or will do for them. For them the United Nations is a factor, admittedly an important one, but their hopes and aspirations are not totally dependent on goodwill from the outside.

Foreign Economic Interests

Activities of foreign economic interests in Namibia and other Territories have not changed significantly, despite the Assembly's condemnations. The Special Committee of 24 reported that countries whose companies and nationals engaged in such activities had done nothing to stop them. Rather than being restrained, the foreign interests had expanded their exploitation of the Territories, the Special Committee of 24 stated. "Foreign monopolies continue to follow economic and financial policies detrimental to the Territories' genuine interest", the Committee has said. Their high profits "continue to be taken out of the Territories or to remain in the hands of the exploitative minority of foreign settlers" while the indigenous populations "scratch off their meagre subsistence at the mercy of their foreign oppressors . . . In return the monopolies supply the colonial régimes with funds and other forms of assistance, including the military assistance needed to crush national liberation movements." (Western members of the Committee considered those charges unfounded.)

Whether all countries concerned would heed the Security Council's call for discouragement of investment in Namibia remained unknown, although the United States informed the Council that it would officially discourage such investment and would not protect any investments in Namibia against claims of a future lawful Government.

The African countries and other United Nations Members, as well as the Special Committee of 24 and the Special Committee on *Apartheid*, have all urged that the Security Council take stronger measures against South Africa—such as mandatory economic sanctions, as provided for in Chapter VII of the Charter. Three of the Council's permanent members—France, the United Kingdom and the United States—have opposed mandatory sanctions against South Africa, maintaining that an economic war with that country would not produce the desired results. Many United Nations Members have argued that the situations in Namibia, in South Africa and in the other colonial Territories of southern Africa are closely related—and that the colonial régimes could not survive without direct or indirect support of the major Western Powers.

In recent years the Africans of Namibia—and of the other southern African Territories—have increasingly expressed the view that it is primarily through their own resistance struggle that they will gain freedom and independence. The potential dangers ahead were emphasized in October 1970 by the Rapporteur of the *Apartheid* Committee, who warned that effective coercive measures will have to be applied against South Africa by the international community "if the impending disaster of large-scale racial war is to be averted".

The Manifesto adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) in September 1969 called on the countries of the world to enforce the decisions they had taken on Namibia. "If they do this there is hope that the change can be effected without great violence", the African leaders declared. "If they fail, then

sooner or later the people of South West Africa will take the law into their own hands. The people have been patient beyond belief, but one day their patience will be exhausted. Africa, at least, will then be unable to deny their call for help."

The Challenge

Former Secretary-General U Thant viewed the situation in southern Africa as "one of the gravest challenges to the authority of the United Nations", and he called for united action to induce the régimes of southern Africa to change their course.

His successor, Kurt Waldheim, in his annual report for 1973 emphasized the special responsibilities of the international community towards the Territory and the people of Namibia, and urged the competent United Nations organs, and the Security Council in particular, to continue to seek effective approaches to bring about a solution based on the inalienable rights of the Namibian people to self-determination, national independence, and preservation of the unity and territorial integrity of Namibia.

A Namibian's View

This booklet opened with the words of one of the Namibian leaders tried and convicted in the 1968 "terrorism" case—Toivo Hermann ja Toivo, a teacher, regional secretary of SWAPO, and father of four, now serving a 20-year prison sentence. His statement to the court that convicted him now ends this record of the tragedy of Namibia, but it shows that the story remains to be finished—by the people of Namibia:

> You, my Lord, decided that you had the right to try us, because your Parliament gave you that right. That ruling has not and could not have changed our feelings. We are Namibians and not South Africans. We do not now, and will not in the future recognize your right to govern us; to make laws for us in which we had no say; to treat our country as if it were your property and us as if you were our masters.
>
> We have always regarded South Africa as an intruder in our country. This is how we have always felt and this is how we feel now, and it is on this basis that we have faced this trial. I speak of "we" because I am trying to speak not only for myself, but for others as well, and especially for those of my fellow accused who have not had the benefit of any education. I think also that when I say "we", the overwhelming majority of non-white people in South West Africa would like to be included . . .
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> A Court can only do justice in political cases if it understands the position of those that it has in front of it. The State has not only wanted to convict us, but also to justify the policy of the South African Government. We will not even try to present the other side of the picture, because we know that a Court that has not suffered in the same way as we have, cannot understand us. This is perhaps why it is said that one should be tried by one's equals. We have felt from the very time of our arrest that we were not being tried by our equals but by our masters, and that those who have brought us to trial very often do not even do us the courtesy of calling us by our surnames . . .

We know that whites do not think of blacks as politicians—only as agitators. Many of our people, through no fault of their own, have had no education at all. This does not mean that they do not know what they want. A man does not have to be formally educated to know that he wants to live with his family where he wants to live, and not where an official chooses to tell him to live; to move about freely and not require a pass; to earn a decent wage; to be free to work for the person of his choice for as long as he wants; and finally, to be ruled by the people that he wants to be ruled by, and not those who rule him because they have more guns than he has . . . Only one who is not white and has suffered the way we have can say whether our grievances are real or "so-called". Those of us who have some education, together with our uneducated brethren, have always struggled to get freedom. The idea of our freedom is not liked by South Africa . . .

Your Government, my Lord, undertook a very special responsibility when it was awarded the Mandate over us after the First World War. It assumed a sacred trust to guide us towards independence and to prepare us to take our place among the nations of the world. We believe that South Africa has abused that trust because of its belief in racial supremacy—that white people have been chosen by God to rule the world—and *apartheid*. We believe that for 50 years South Africa has failed to promote the development of our people. Where are our trained men? The wealth of our country has been used to train your people for leadership, and the sacred duty of preparing the indigenous people to take their place among the nations of the world has been ignored . . .

From 1960 it looked as if South Africa could not oppose the world forever. The world is important to us. In the same way as all laughed in Court when they heard that an old man tried to bring down a helicopter with a bow and arrow, we laughed when South Africa said that it would oppose the world. We knew that the world was divided, but as time went on it at least agreed that South Africa had no right to rule us.

I do not claim that it is easy for men of different races to live at peace with one another. I myself had no experience of this in my youth, and at first it surprised me that men of different races could live together in peace. But now I know it to be true and to be something for which we must strive. The South African Government creates hostility by separating people and emphasizing their differences. We believe that by living together, people will learn to lose their fear of each other. We also believe that this fear which some of the whites have of Africans is based on their desire to be superior and privileged and that when the whites see themselves as part of South West Africa, sharing with us all its hopes and troubles, then that fear will disappear. Separation is said to be a natural process. But why, then, is it imposed by force? And why then is it that whites have the superiority?

I have come to know that our people cannot expect progress as a gift from anyone, be it the United Nations or South Africa. Progress is something we shall have to struggle and work for . . .

I am a loyal Namibian and I could not betray my people to their enemies. I admit that I decided to assist those who had taken up arms. I know that the struggle will be long and bitter. I also know that my people will wage that struggle, whatever the cost. Only when we are granted our independence will the struggle stop. Only when our human dignity is restored to us, as equals of the whites, will there be peace between us . . .

We are not looking forward to our imprisonment. We do not, however, feel that our efforts and sacrifice have been wasted. We believe that human suffering has its effect even on those who impose it. We hope that what has happened will persuade the whites of South Africa that we and the world may be right and they may be wrong. Only when white South Africans realize this and act on it will it be possible for us to stop our struggle for freedom and justice, in the land of our birth.

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